

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Jan Thronsdon ,

Complainant,

ORDER OF DISMISSAL

v.

The Rochester Post Bulletin,

Respondent.

On December 12, 2012, Jan Thronsdon filed a Complaint with the Office of Administrative Hearings alleging that *The Rochester Post Bulletin* violated Minn. Stat. § 211B.05, subd 4 in its coverage of the 2012 race for Rochester City Council President.¹

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on December 12, 2012, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by e-mail and United States mail to the Respondent on December 12, 2012.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a *prima facie* violation of Minn. Stat. § 211B.05, subd 4. Therefore, the Complaint is dismissed.

Based upon the Complaint, the supporting filings, and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Jan Thronsdon against The Rochester Post Bulletin is **DISMISSED**.

Dated: December 19, 2012

s/James E. LaFave

JAMES E. LAFAVE

Administrative Law Judge

¹ Mr. Thronsdon was a candidate for President of the Rochester City Council in the November 6, 2012, General Election.

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Complainant Jan Thronrdson was a candidate for Rochester City Council President in the November 6, 2012, General Election.² The only other candidate to file for the office of City Council President was the incumbent, Dennis L. Hanson.³ On June 27, 2012, Mr. Hanson died of a brain aneurysm.⁴

Mr. Hanson's family wanted to remove his name from the ballot, but they were legally prohibited from doing so.⁵ Mr. Hanson's name remained on the ballot.⁶ On November 6, 2012, Mr. Hanson received 23,860 (51.55%) votes compared to 19,854 (42.90%) for Mr. Thronrdson.⁷

The Complaint alleges that *The Rochester Post Bulletin* ran a series of articles reporting on Mr. Hanson's death and the effect of his death on the race for Rochester City Council President that were designed to influence the election in violation Minn. Stat. § 211B.05, subd 4.

Standard of Review

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁸ For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.⁹ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.¹⁰

² See Complaint Exhibits.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See Minnesota Secretary of State, Result for Selected Contests in 534880 – City of Rochester. In addition to the votes cast for Mr. Hanson and Mr. Thronrdson, there were 2,571 (5.55%) write-in votes.

⁸ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

⁹ *Id.*

¹⁰ *Id.*

Minnesota Statutes § 211B.05, subd. 4, Paid Advertisements in News.

Minnesota Statutes § 211B.05, subd 4 provides, as follows:

Unpaid material published in a newspaper, magazine or other publication that is (1) in unique typeset or otherwise differentiated from other unpaid material, (2) designed to influence or attempt to influence the voting at any election or the passage or defeat of legislation, and (3) not placed on the editorial page must be clearly identified as an editorial opinion.

Analysis

The Rochester Post Bulletin was reporting on the death of an apparently beloved former President of the Rochester City Council and the effect his death would have on the upcoming election. It was legitimate and important news. The articles did not amount to advertisements or editorials on behalf of Mr. Hanson in violation of Minn. Stat. § 211B.05, subd 4.

Mr. Thronson was understandably concerned about the amount of press being given to the other candidate on the ballot. The mere fact Mr. Hanson's death received substantial press coverage does not, however, equate to a violation of the law for the reasons explained above.

The Administrative Law Judge finds that the Complainant has failed to establish *prima facie* violations of Minn. Stat. § 211B.05, subd. 4 with respect to the articles published by *The Rochester Post Bulletin*. The appropriate result is dismissal of the Complaint.

J. E. L.